

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....X
K.S., on behalf of herself and on behalf of her Minor
Child, D.S.,

21 CV 4649 (PAC)

Plaintiff,

- against -

ORDER

CITY OF NEW YORK, *et al.*,

Defendants.
.....X

PAUL A. CROTTY, United States District Judge:

Having reviewed the parties' submissions dated May 10, 15, 16, and 17, 2023, including their joint proposed order, considered their arguments at the hearing on May 16, 2023, and as further elaborated in a forthcoming opinion, IT IS HEREBY ORDERED:

1. Without the Department of Education ("DOE") conceding that Family First Adolescent Services ("FFAS") is an appropriate placement under the Individuals with Disabilities Education Act ("IDEA"), DOE shall fund placement for D.S. at FFAS on a month-to-month basis, for up to 90 days contingent on the provisions set forth herein.

2. The funding described above in paragraph 1 will remain in place at least unless and until DOE finds a suitable alternate placement that Plaintiff K.S. accepts or the Court orders, or an impartial hearing order is rendered in the underlying administrative action (IHO Case No. 210063).

3. FFAS shall provide the DOE with an affidavit of costs, a signed W-9 form and an executed contract.

4. The DOE shall make payments to FFAS for D.S.'s placement in 30-day increments, upon receipt of the documents outlined in Paragraph 3.

5. Subject to the following provisions and the forthcoming contract between FFAS and the Plaintiff, the DOE shall make the initial payment to FFAS in the amount of \$74,000 for the first 30-days plus a \$500 deposit for a total amount of \$74,500 by May 22, 2023. Further, with respect to the first 30-day period, the DOE will also be responsible for any additional payment of \$250 per day if FFAS determines after that D.S. requires an overnight and/or additional aide.

6. Subject to the following provisions and the forthcoming contract between FFAS and the Plaintiff, if the DOE receives an invoice from FFAS reflecting updated charges during the first 30 days for an additional aide, the DOE shall pay FFAS the increased amount.

7. Subject to the following provisions and the forthcoming contract between FFAS and the Plaintiff, the DOE shall make payments for the second and third 30-day period as follows: (a) the second payment to FFAS shall be made on or by seven days prior to the start of the second 30-day stay in the amount either of (i) \$73,000 or (ii) an increased amount up to and not to exceed \$80,500 (if D.S. requires an additional 1:1 aide or overnight aide); (b) the third payment to FFAS shall be made on or seven days prior to the start of the third 30-day stay in the amount either of (i) \$73,000 or (ii) an increased amount up to and not to exceed \$80,500 (if D.S. requires an additional 1:1 aide or overnight aide).

8. If D.S. leaves FFAS for any reason prior to the 90 days and cannot return, the program will charge a prorated amount for any day he was there.

9. FFAS or K.S. will provide an invoice to the DOE at least one week before the funds are due advising DOE of the amount for the next installment.

10. K.S. or FFAS must immediately notify the DOE in writing if D.S. leaves the program and is no longer in attendance at FFAS.

11. Plaintiff K.S. shall submit all bills associated with D.S.'s placement at FFAS to her insurance company and inform the DOE of any insurance funding.

12. FFAS shall send the DOE weekly attendance records.

13. The Plaintiff will cooperate with the DOE as it continues to search for an alternative placement. Should the DOE find a placement that accepts D.S., if K.S. agrees to the placement, the parties may move the Court to alter this order or may submit a stipulation signed by both parties to that effect. If K.S. rejects the placement, either party may move the Court for a modification of the order.

14. If, during the time this order is in effect, K.S. locates a different residential program and placement that accepts D.S., K.S. can apply to the Court for a modification of this order or may submit a stipulation signed by both parties indicating that the Defendants will fund the alternative program instead of FFAS.

15. K.S. and her husband are entitled to reimbursement for at least one visit to D.S. at FFAS. Whether K.S. and her husband are entitled to reimbursement for additional visits to D.S. during the school year will be litigated at the impartial hearing or negotiated between the parties.

16. The DOE shall be entitled to a pro-rated refund if D.S. permanently leaves FFAS. FFAS shall provide the DOE with proof of actual attendance at the end of each 30-day payment period.

17. Within 30 days of the end of each month, FFAS will return to the DOE any payments made by the DOE for any days that D.S. is not in attendance at FFAS unless the absence is the type of short-term, excused absence from programming within FFAS consistent with the type of excused absences that are funded at other private placements.

18. The DOE shall reimburse K.S. for the cost of transportation services to transport the student to and from FFASs and any other setting and/or institute in which he currently is placed, as well as any home visits (as required by the program).

19. If D.S. is unable to be maintained at FFAS, the DOE will continue to fund D.S.'s tuition at another appropriate residential setting.

20. The DOE shall continue to fund FFAS or another appropriate private residential placement/program and above transportation costs until an impartial hearing order is rendered in the underlying administrative action (IHO Case No. 210063).

IT IS FURTHER ORDERED that service of this Order upon the parties will be complete upon the filing of this Order by the Court on ECF; and

IT IS FURTHER ORDERED that the requirement under Rule 65(c) that a bond be posted is waived.

IT IS FURTHER ORDERED that any denial is without prejudice to its renewal by either party.

Dated: New York, New York
May 17, 2023

SO ORDERED



HONORABLE PAUL A. CROTTY
United States District Judge